



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Amanda S. La Forge, Chief Counsel
Democratic National Committee
430 S. Capitol Street, S.E.
Washington, D.C. 20003

DEC 11 2009

Joseph E. Sandler, Esq.
Sandler, Reiff & Young, PC
300 M Street, S.E., Suite 1102
Washington, D.C. 20003

RE: MUR 6110
Democratic National Committee
Obama Victory Fund
Andrew Tobias, in his official
capacity as treasurer

Dear Ms. La Forge and Mr. Sandler:

On November 3, 2008, the Federal Election Commission notified your clients, the Democratic National Committee ("DNC"), the Obama Victory Fund ("OVF"), and their common treasurer, Andrew Tobias, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On November 17, 2009, the Commission, on the basis of the information in the complaint and information provided by your clients, dismissed the allegation that the DNC, OVF, and their common treasurer, Andrew Tobias, violated the Act based on the alleged receipt of contributions from Square Root Sales, Senate Realty Corporation, and M&A Development, LLC. Additionally, the commission found no reason to believe that your clients violated 11 C.F.R. § 102.17(c) in connection with the Concert for Change. Further, the Commission found no reason to believe that the Obama Victory Fund violated 11 C.F.R. 102.17(c) with respect to the solicitations for the VIDA Fitness/Bang Salon fundraiser. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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MUR 6110
Democratic National Committee
Obama Victory Fund

If you have any questions, please contact Michael Columbo, the attorney assigned to this matter at (202) 694-1650.

Sincerely,



Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** The Democratic National Committee **MUR 6110**
6 and Andrew Tobias,
7 in his official capacity as treasurer
8
9 Obama Victory Fund
10 and Andrew Tobias,
11 in his official capacity as treasurer
12

13 **I. GENERATION OF MATTER**

14
15 This matter was generated by a complaint filed with the Federal Election Commission by
16 Robert J. Kabel, on behalf of the District of Columbia Republican Committee. *See* 2 U.S.C.
17 § 437g(a)(1).
18

19 **II. INTRODUCTION**

20 The complaint alleges that the Democratic National Committee ("DNC"), and the Obama
21 Victory Fund ("OVF") (together "Committees") violated the Federal Election Campaign Act of
22 1971, as amended ("the Act"), by accepting prohibited corporate in-kind contributions and
23 failing to include the proper joint fundraising notice and disclaimers in solicitations for two
24 fundraising events that took place in September 2008: the "Concert for Change" and an event
25 held at a gym owned by VIDA Fitness in Washington, D.C. *See* 2 U.S.C. § 441b(a); 11 C.F.R.
26 § 102.17(c). OVF is a joint fundraising committee that disburses its proceeds to the DNC and
27 Obama for America ("OFA"), the principal campaign committee of Barack Obama for his 2008
presidential campaign.

28 **A. Concert for Change**

29 The Concert for Change (the "Concert") was a fundraising event that took place on
30 September 20, 2008, at the Atlas Theater in Washington, D.C. According to one of the

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1 Concert's web pages, the Concert raised \$13,500 in contributions. The complaint alleged that
2 corporations sponsored the Concert and, therefore, that the DNC and OVF knowingly accepted
3 corporate contributions in violation of 2 U.S.C. § 441b(a), and the alleged sponsoring
4 corporations made prohibited corporate contributions in violation of 2 U.S.C. § 441b(a) or
5 facilitated contributions in violation of 11 C.F.R. § 114.2(f)(1). *See* Complaint at 3-4. The
6 complaint also alleged that the Concert's promotional materials constituted solicitations for joint
7 fundraising activity and, therefore, the DNC and OVF violated 11 C.F.R. § 102.17(c) by failing
8 to include joint fundraising notices in the solicitations. *See* Complaint at 4.

9 The businesses that allegedly made the prohibited in-kind corporate contributions are
10 Square Root Sales, Senate Realty Corporation, and M&A Development, LLC ("Businesses").
11 As discussed in greater detail below, it appears that the Businesses, which were identified in
12 some of the Concert's promotional materials as "sponsors" of the Concert, did not use their
13 general treasury funds to pay the costs of the Concert. Rather, individuals affiliated with the
14 Businesses used their personal funds to pay the costs of the Concert. OVF and the DNC asserted
15 in their response that they were unaware of the Concert until the complaint was filed and that the
16 Concert was not an official or authorized event. The Concert's organizer(s) were not identified
17 in the complaint and there is no information suggesting that they formed an enterprise with
18 ongoing activities or assets.

19 Consequently, the Commission dismisses the allegation that the OVF and the DNC
20 violated the Act based on the alleged receipt of prohibited corporate contributions from the
21 Businesses in connection with the Concert. Additionally, the Commission finds no reason to
22 believe that the OVF and the DNC violated 11 C.F.R. § 102.17(c) in connection with the
23 Concert.

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B. VIDA Fitness/Bang Salon Spa Fundraiser

The complaint also alleges that _____

_____ facilitating the making of contributions to OVF and that, as a consequence, OVF accepted a prohibited corporate contribution. The complaint claims that VIDA Fitness and Bang Salon Spa ("Bang Salon") facilitated the making of contributions by using their email accounts and a common list of their "customers and friends" to email invitations/solicitations to a September 26, 2008 OVF fundraiser that was held at a VIDA Fitness gym. Complaint at 2. Because it appeared that VIDA Fitness and Bang Salon never charged OVF for the use of the email list, the complaint argues that _____

_____ OVF knowingly accepted, prohibited corporate contributions. *Id.* Bang Salon is the brand name for Urban Salons, Inc. For the sake of clarity, this entity is herein referred to as "Bang Salon." In view of OVF's status as a joint fundraising committee, the complaint also alleged that the VIDA/Bang Salon emails should have contained a joint fundraising notice pursuant to 11 C.F.R. § 102.17(c). *See id.* at 2-3.

Because the available information suggests that neither the DNC nor OVF requested that David von Storch, founder and CEO of VIDA Fitness and Bang Salon, use the VIDA/Bang Salon email list and that von Storch used the list without the prior knowledge, approval, or authorization of the DNC or OVF, the Commission finds no reason to believe the allegation that OVF violated 2 U.S.C. § 441b(a) by knowingly receiving VIDA/Bang's contribution of the email list. Finally, because von Storch was an OVF fundraising volunteer that drafted the VIDA/Bang email invitation/solicitation without the knowledge or authorization of OVF and its lack of a joint fundraising notice was of limited impact, the Commission finds no reason to

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believe that OVF violated 11 C.F.R. § 102.17(c) based on the email solicitations sent by VIDA Fitness and Bang Salon.

III. CONCERT FOR CHANGE

A. Factual Summary

According to the complaint, unknown individuals promoted the "Concert for Change" by distributing flyers and signs near the Eastern Market Metro in Washington, D.C., and by establishing web pages that solicited contributions on the DNC and OFA websites. Some of the Concert's promotional materials, which were attached to the complaint, state that the Businesses were "in-kind sponsors" of the Concert.

The Concert's unknown organizer(s) rented the Lang Theater, a space within the Atlas Theater at 1338 H Street, N.E., in Washington, D.C., that normally rents for \$6,000, and arranged for singer Steve Washington and the "Doug Elliot Orchestra" to perform. According to the Concert's promotional materials, the event included a cash bar and valet parking. The theater also normally requires event organizers to hire security guards and pay insurance. Sound equipment is not included in the cost of the theater and may also have been an additional expense. According to its website, www.aconcertforchange.org, the event's organizers were able to raise \$13,500. Of this, it appears that the concert raised \$1,780 through online contributions using its webpage on OFA's MyBO website, \$155 through its pages on the DNC PartyBuilder website, and rest were collected at the theater box office. The available information does not indicate whether or how the theater box office collected the required contributor information and forwarded the contributions to OVF (or DNC and OFA).¹

¹ The Commission has no information as to what the Concert's organizers did with the contributions collected at the Atlas Theater box office.

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1 1. Concert for Change Sign

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3 The complaint alleged that the Concert's organizer(s) distributed flyers and posted signs
4 for the Concert in the Eastern Market area of Washington, D.C. Complaint at 3. A sign,
5 submitted as an attachment to the complaint, describes the Concert as a "concert-cabaret
6 fundraiser for The Obama Campaign" and provides a website address,
7 www.aconcertforchange.org. The sign also states, below the official logo and web address of the
8 Obama campaign (OFA), "FUNDRAISER." The image of the OFA logo is of poor quality,
9 however, as if it was a copy enlarged many times. Near the bottom of that panel, it states "Many
10 thanks to our individual in-kind contributors (sponsors) affiliated with the following
11 organizations" above the names of five people and the names and logos of the Businesses. The
12 first name is that of Chase Alan Moore along with the name and logo of "Square Root Sales"
13 with text which states "real estate marketing, sales, and management." The second set of names,
14 Lisa Williams, Cher Castillo Freeman, and James Williams, is printed above the name and logo
15 of Senate Realty Corporation. The final name and logo combination is that of Anthony
16 Washington and M&A Development.

17 2. Democratic National Committee Websites

18 The Concert's organizers also posted a web page on the PartyBuilder section of the DNC
19 website, www.democrats.org/page/outreach/view/total/aconcertforchange, which solicited
20 donations.² The text of the web page states a fundraising goal of \$30,000. The Concert's web
21 page on the DNC web site also solicited online contributions. The Concert's DNC web page,
22 like the Concert's poster, stated that the Concert was a "fundraiser to support THE OBAMA

² PartyBuilder enables DNC supporters to create and manage a "personal fundraising homepage" for "keeping track of all personal fundraising."

1 CAMPAIGN" (emphasis in original) and bore the Obama campaign name, logo, and website
2 address. However, the Concert's DNC web page also stated that "100% of donations go directly
3 to the Obama Victory Fund." The Concert's DNC web page also stated that the "individual
4 donors will be recognized by the DNC." Thus, it is unclear whether the recipient of
5 contributions made through this web page was the DNC or OVF.³ Moreover, if the recipient was
6 OVF, neither the Concert's DNC web page nor the contribution page currently connected to the
7 link on the Concert's web page include a joint fundraising notice. See 11 C.F.R. § 102.17(c).

8 Like the poster, the Concert's DNC web page includes the same set of individual names
9 and corporate names and logos below the statement: "Many thanks to our generous gift-in-kind
10 sponsors." The page also contains a graphic that, in addition to stating the name of the musical
11 entertainment at the Concert and the statement that it is a "fundraiser for The Obama Campaign,"
12 lists along its right side the names and corporate logos of M&A Development, Senate Realty,
13 and Square Root Sales under the Obama Campaign logo, Obama campaign website address, and
14 the title "In-Kind Sponsors." No individuals' names are listed with the corporate logos in this
15 graphic. At the bottom of the webpage, it states "Copyright 1995-2008 DNC Services Corp.,"
16 "Paid for by the Democratic National Committee," the DNC address, and "This communication
17 is not authorized by any candidate or candidate's committee."⁴

³ On May 19, 2009, the Commission mailed a letter to the DNC asking it to clarify its response, specifically, which text on the Concert's web page on the DNC's Party Builder system was written by the Concert's organizer(s) and which was written by the DNC, and whether, at the time of the Concert, contributions made through the Concert's web page on the DNC's web site were made to the DNC, OVF, or to another committee. The DNC did not respond.

⁴ A separate Concert web page on the DNC PartyBuilder website similar in content to the Concert's DNC web pages described above is found at www.democrats.org/page/event/detail/4vkfp. The link on the page for making a contribution, in order to obtain a ticket to the Concert, directs the viewer to the Concert's DNC website described above. This page lists Chase Moore as the host of the Concert.

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1 3. Businesses
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3 The Concert's promotional materials list the Businesses and affiliated individuals as
4 "individual in-kind contribution sponsors," and one web page listed the Businesses as "In-Kind
5 Sponsors" without the names of any individuals. The Businesses identified in the promotional
6 materials are: (a) Square Root Sales, affiliated with Chase Alan Moore; (b) Senate Realty,
7 affiliated with Lisa Williams, Cher Castillo Freeman, and James Williams; and (c) M&A
8 Development, affiliated with Anthony Washington.

9 a. *Square Root Sales*

10 The Concert's promotional materials indicated that Chase Alan Moore was affiliated with
11 "Square Root Sales." He is also the registered agent for an entity called "Square Root, LLC."
12 The available information indicates that Square Root Sales is the name of a team of real estate
13 agents at Senate Realty Corporation which was to be distinguished from Square Root, LLC,
14 which had no connection to the Concert for Change. According to the website of Square Root
15 Sales, Moore is the leader of the Square Root Sales team. The available information also
16 indicates that one of the members of the Square Root Sales team is Steve Washington, the
17 performer at the Concert. The available information indicates that neither the Square Root Sales
18 team nor Square Root, LLC, made a contribution to the Concert. Rather, Moore, using personal
19 funds, made an in-kind contribution within the limits of the Act to support the Concert.

20 b. *Senate Realty Corporation*
21

22 Senate Realty Corporation is incorporated in Washington, D.C. Lisa Williams is Senate
23 Realty Corporation's principal broker and a co-owner; her co-owners are James C. Williams and
24 Cher Castillo, the other two individuals whose names appear on the Concert for Change
25 promotional materials with the Senate Realty Corporation name and logo. The available

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1 information indicates that Ms. Williams worked on the Concert for Change as a volunteer acting
2 in her personal capacity and not as a representative of Senate Realty, and that the use of the
3 Senate Realty logo was not meant to imply a corporate sponsorship of the event. The available
4 information also indicates that Ms. Williams made an in-kind contribution, paid by a check
5 drawn from her personal checking account, to pay for expenses related to the Concert, and that
6 no Senate Realty funds were used in connection with her contribution.

7 *c. M&A Development, LLC*

8 The available information indicates that M&A Development, LLC, made no contribution,
9 either by using its corporate treasury funds or through an in-kind contribution. M&A has no
10 employees, revenues, or expenses. The singer at the concert, Steve Washington, is the brother of
11 Anthony Washington, the person affiliated with M&A Development in the Concert's
12 promotional materials. The available information indicates that Anthony Washington,
13 personally, contributed \$1,000 to the event.

14 **B. Analysis**

15 **1. Alleged Corporate Contributions**

16
17 The complaint alleged that the Concert's promotional materials, including web pages
18 soliciting contributions on the DNC website, included the logos of three businesses identified as
19 "individual in-kind contributors (sponsors)," implying that the Democratic National Committee
20 and the Obama Victory Fund knowingly accepted prohibited corporate contributions. Complaint
21 at 3-4. Neither a federal candidate nor a political committee may knowingly accept a
22 contribution from a corporation. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(d). The DNC and
23 OVF did not disclose receiving contributions from the Businesses. *See* 2 U.S.C. § 434(b)(3).

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Corporations, such as Senate Realty Corporation, are prohibited from making any contributions to candidates for federal office, including facilitating the making of a contribution by using its corporate resources to engage in fundraising activities in connection with any federal election. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(f)(1). A limited liability company (“LLC”) such as M&A Development, LLC, is considered a corporation or a partnership under the Act depending on whether it elects to be treated by the Internal Revenue Service as a corporation or a partnership. *See* 11 C.F.R. § 110.1(g). If an LLC is considered to be a partnership, it may make contributions to a candidate for federal office subject to the limit in 2 U.S.C. § 441a(a)(1)(A), which was \$2,300 during the 2008 election cycle. *See* 11 C.F.R. § 110.1(e). A contribution by a partnership is attributed to the partnership and to each partner. *Id.* By contrast, the available information indicates that Square Root Sales is an unincorporated team of real estate agents working for Senate Realty Corporation. Thus, it does not appear to be a separate legal entity with its own resources.

It is not clear from the Concert’s promotional materials whether the Concert’s “sponsors” were the named individuals acting in their personal capacity, or were the businesses associated with those individuals. For instance, the Concert’s sign states “Many thanks to our *individual* in-kind contributors (sponsors) affiliated with the following organizations” (emphasis added), and it lists the names of individuals above their affiliated corporate logos. The clearest indication that the Businesses may have made or facilitated contributions is found in the Concert’s DNC webpage which includes a graphic that identifies the Businesses as the Concert’s “In-Kind Sponsors” without any mention of individual contributors/sponsors. At the bottom of the Concert’s DNC webpage, it lists both individuals and the Businesses with which they are affiliated as “gift-in-kind sponsors.”

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1 The available information indicates that no corporate or other business entity's funds
2 were used to pay for the costs of the Concert. Rather, individuals named in the promotional
3 materials used their personal funds and volunteered in their individual capacity. A related issue,
4 however, is whether the inclusion of business entity names and logos in the Concert's
5 promotional materials constituted a contribution by those businesses.

6 Although the use of the companies' names and logos in this matter may have constituted
7 a contribution from the Businesses to the DNC and OVF, for the reasons set forth below, the
8 Commission dismisses the allegation that the DNC and OVF violated the Act by knowingly
9 accepting corporate contributions from the Businesses.

10 A contribution includes anything of value made by any person for the purpose of
11 influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). The term "anything of value"
12 encompasses any goods or services provided without charge or at less the usual and normal
13 charge unless otherwise specifically exempted. *See* 11 C.F.R. § 100.52(d)(1). Corporate names,
14 trademarks, and service marks can be valuable corporate resources, and corporations may invest
15 substantial resources in choosing a trademark, developing its value, and defending it. A
16 trademark is a limited property right in a "particular word, phrase or symbol." *See New Kids on*
17 *the Block v. News America Pub., Inc.*, 971 F.2d 302, 306 (9th Cir. 1992). Trade names are also
18 protected when they acquire a "secondary meaning" in that they "symbolize a particular
19 business." *Madrigal Audio Labs., Inc. v. Cello, Ltd.*, 799 F.2d 814, 822 (2d Cir. 1986).

20 A corporation's name and trademark, therefore, are things of value owned by the
21 corporation. Because the Act prohibits corporations from contributing anything of value to
22 committees, or using their resources to facilitate contributions to committees, a donation by a
23 corporation of its trademark to a committee (for example, to use on a solicitation for

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1 contributions to a committee or to indicate the corporation's support for a candidate) would
2 constitute an impermissible corporate contribution.

3 Accordingly, the Commission has previously considered corporate names and trademarks
4 to be things of value. In MUR 5578 (Wetterling for Congress), the complaint alleged that a
5 committee received a corporate contribution when it allegedly used a corporation's trademark
6 (America's Most Wanted) in a campaign ad. *See* MUR 5578 Complaint at 1-2. The
7 Commission approved the recommendation of the General Counsel's Office to find no reason to
8 believe that Wetterling for Congress violated the Act for several reasons, including that the
9 committee paid for all advertising expenses, the advertisement did not include or suggest a
10 corporate endorsement, and the fact that the alleged corporate logo used in the campaign ad at
11 issue was not the alleged contributing corporation's logo. *See* MUR 5578 Certification of
12 Commission's Actions on February 22, 2006; First General Counsel's Report at 4-8.

13 In Advisory Opinion 2007-10 (Reyes), the Commission concluded that a committee
14 holding a fundraising golf tournament could not give recognition to its contributors by posting
15 signs at particular holes with the contributors' names and job titles as well as the name,
16 trademark, or service mark of their employers. *See* AO 2007-10 (Reyes) at 3. The AO requestor
17 stated that its inclusion of the names, trademarks, and service marks of its contributors' corporate
18 employers was intended to encourage contributions. *Id.* at 2. The Commission concluded that
19 corporate names, trademarks, and service marks "are corporate resources" and, because neither a
20 corporation nor its agents may use the corporation's resources to facilitate the making of
21 contributions to a federal political committee, the proposed activity would violate the Act. *Id.* at
22 2-3. In AO 2007-10 (Reyes), the Commission distinguished AO 1984-43 (Brunswick) and AO
23 1978-77 (Aspin), in which the Commission concluded that a candidate's endorsers may be

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1 identified with their corporate positions in campaign-funded advertisements, noting that neither
2 involved the use of corporate resources to facilitate contributions and that both predated the
3 Commission's corporate facilitation regulations. *Id.* at 3; *see also Corporate and Labor*
4 *Organization Activity; Express Advocacy and Coordination with Candidates Explanation and*
5 *Justification*, 60 Fed. Reg. 64260, 64274-75 (Dec. 14, 1995).⁵

6 In contrast to the circumstances in *Wetterling*, the DNC and OVF did not pay for the
7 expenses associated with the Concert's promotional materials, some of the Concert's
8 promotional materials suggest a corporate endorsement, and the names and logos used in the
9 Concert's promotional materials were those of the Businesses. Although the corporate names
10 and logos in the Concert's solicitations were things of value, the value of the names and logos of
11 these particular businesses is likely insubstantial, and the fundraising event was relatively modest
12 in size. The Concert raised \$13,500 and was attended by less than 200 people.

13 The DNC and OVF state in their response that neither the "DNC nor OVF ever hosted a
14 'Concert for Change' fundraising event" and that, although the Concert's materials suggest it
15 would benefit the DNC or OVF, the Concert was not an official, authorized, or sanctioned event,
16 and it was conducted without the cooperation or approval of the DNC or OVF. DNC/OVF
17 Response at 3. According to the DNC and OVF, promotion of the event on the DNC and OFA
18 websites "does not transform an otherwise unauthorized event into an official, sanctioned DNC
19 or OVF event." *Id.* The DNC stated that it does not "pre-screen or otherwise review" what

⁵ The Commission has previously considered a specific regulation applicable to the use of corporate logos when promulgating regulations in response to the Supreme Court's decision in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986). The Commission considered alternative drafts and ultimately was unable to reach a majority decision. *See Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates Explanation and Justification*, 60 Fed. Reg. 64260, 64268 (December 14, 1995). Nevertheless, as discussed above, and as observed by the Commission in MUR 5578 and AO 2007-10 after the 1995 rulemaking, the use of a corporate name or logo is something of value within the meaning of 2 U.S.C. § 441b(a).

1 appears on its PartyBuilder platform, which was used to promote the Concert. *Id.* Therefore, the
2 DNC and OVF assert, they did not knowingly accept prohibited corporate contributions. *Id.*

3 The DNC encouraged its supporters to engage in fundraising and provided the necessary
4 tools to do so, apparently without warnings to make sure fundraising efforts complied with the
5 Act, including that corporate resources could not be used to pay fundraising costs. As noted
6 above, the available information indicates that none of the Businesses contributed money directly
7 to the Committees or paid for the costs of the Concert. The only contributions made by the
8 Businesses appear to have been in-kind contributions resulting from the use of the company
9 names and logos to solicit contributions to the Committees. Nevertheless, given the modest size
10 of the fundraising event, which raised only \$13,500 and was attended by less than 200 people,
11 and the fact that the value of the company names and logos is not likely substantial in this case,
12 further action by the Commission to investigate whether the Committees knowingly accepted or
13 received in-kind contributions that they failed to disclose and that violated the Act's contribution
14 limitations or source prohibitions is not warranted. *See Heckler v. Chaney*, 470 U.S. 821, 831
15 (1985).

16 Accordingly, the Commission dismisses the allegation that the Democratic National
17 Committee and the Obama Victory Fund, and Andrew Tobias, acting in his official capacity as
18 their treasurer, violated the Act based on the alleged receipt of contributions from Square Root
19 Sales, Senate Realty Corporation, and M&A Development, LLC.

20 2. Alleged Failure to Include Joint Fundraising Notices
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22 The complaint alleges that the Concert's promotional materials solicit contributions to
23 OVF, which is a joint fundraising committee, and that the solicitations fail to include the proper

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1 joint fundraising notice.⁶ Complaint at 4. As discussed above, some of the Concert's
2 promotional materials appear to solicit contributions to OVF, while others solicit contributions to
3 OFA. The DNC's response stated that it cannot be held liable for the failure to include joint
4 fundraising notices on the Concert's promotional materials because the Concert was not an
5 authorized event. DNC/OVF Response at 3.

6 It does not appear that the Concert's organizers were authorized by the DNC to raise
7 funds for OVF. Relevant to this matter, OVF is a registered joint fundraising committee of the
8 DNC and OFA. *See* OVF Statement of Organization (FEC Form 1), dated June 5, 2008. The
9 Concert's organizers were not OVF participants, nor were they a party to the agreement to
10 fundraise jointly. The DNC specifically denied that the Concert was an authorized event, and
11 denied any knowledge of its existence. *See* DNC/OVF Response at 3. Although the DNC
12 encouraged its supporters to engage in fundraising for the DNC and gave them the resources to
13 do so, including the PartyBuilder fundraising tools and space on the DNC website, there is no
14 information to suggest that the DNC authorized the Concert's organizers to engage in
15 fundraising for OVF, or provided any tools to do so.

16 Moreover, there is no information to suggest that the DNC was aware of the Concert
17 organizers' attempt to solicit funds for OVF or that OVF ever received funds from the concert
18 organizers' efforts. The Concert's online contributions were made through contribution pages on
19 the DNC and OFA websites. There is no indication that the Concert's organizers had any control

⁶ As cited to in the complaint, 11 C.F.R. § 102.17(c)(2), states that for joint fundraising activity conducted under this section, "[i]n addition to any notice required under 11 C.F.R. § 110.11, a joint fundraising notice shall be included with every solicitation for contributions." Under the regulations, such joint fundraising notices must include the names of all committees participating in the joint fundraising activity, the allocation formula to be used to distribute joint fundraising proceeds, a statement informing contributors that they may designate contributions for a particular participant in the joint fundraising activity notwithstanding the allocation formula, and notice that the formula may change to avoid the making and receipt of excessive contributions. *See* 11 C.F.R. § 102.17(c)(2)(i)(A)-(D).

1 over the recipient(s) of online contributions made on the DNC website, even if they had intended
2 the funds to go to OVF. Although the Concert's organizers created the Concert's sign and wrote
3 some of the text which appeared on part of the Concert's DNC webpage, such as the name, date,
4 and location of the event, it nonetheless appears that the content of the DNC website related to
5 the making of online contributions was not under the control of the Concert's organizers. The
6 Commission does not have any information to suggest that contributions made through the DNC
7 website, unless explicitly stated otherwise, went to any committee other than the DNC.

8 Thus, the available information does not give rise to a reasonable inference that the DNC
9 may have authorized the Concert's organizers to engage in fundraising for OVF. Therefore, the
10 Commission finds no reason to believe that the Democratic National Committee and the Obama
11 Victory Fund, and Andrew Tobias acting in his official capacity as their treasurer, violated
12 11 C.F.R. § 102.17(c) by failing to include a joint fundraising notice in the Concert's
13 solicitations.

14 **IV. VIDA FITNESS/BANG SALON FUNDRAISER**

15 **A. Factual Summary**

16 VIDA Fitness is a Subchapter S corporation and Bang Salon is the trade name of Urban
17 Salons, Inc. The available information indicates that on September 19, 2008, VIDA Fitness and
18 Bang Salon sent identical emails to 20,000 of their "customers and friends" that invited them to
19 an official OVF fundraiser and solicited contributions to OVF. *See* Complaint at 1. The email
20 list was one that the two businesses shared and the fundraiser was held on September 26, 2008,
21 in Washington, D.C., at the site of a VIDA Fitness gym and a Bang Salon. *See* DNC/OVF
22 Response at 1. OVF also sent 500 invitations to the event. *See* DNC/OVF Response at 1-2.

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1 The complaint alleges that this use of the VIDA/Bang email list constituted prohibited
2 corporate facilitation of contributions to OVF in violation of 2 U.S.C. § 441b(a) and 11 C.F.R.
3 § 114.2(f)(1). *See* Complaint at 2. Furthermore, the complaint alleges that in view of OVF's
4 status as a joint fundraising committee, the email solicitations failed to include joint fundraising
5 notices as required by 11 C.F.R. § 102.17(c)(2)(i).

6 The available information indicates that David von Storch, founder and CEO of both
7 VIDA Fitness and Bang Salon, sent the emails in his personal capacity as an individual volunteer
8 for the OVF. Von Storch attempted to make clear that the fundraiser was not corporate-
9 sponsored or funded by including a disclaimer in the emails that stated "VIDA and Bang do not
10 endorse nor support any political candidate, but do encourage their members and friends to get
11 involved and participate in the electoral process." In their response, the DNC and OVF claim
12 that von Storch made the decision to send the invitations/solicitations using the VIDA/Bang
13 email list without consulting with Tom Petrillo of the DNC's Finance Department, with whom
14 he had made the arrangements for the use of the VIDA gym for the OVF fundraiser. *See*
15 DNC/OVF Response at 2. The available information indicates that Von Storch subsequently
16 compensated VIDA Fitness \$3,000 for his use of the email list, which contained 20,000 email
17 addresses, and for his use of the internet. OVF has disclosed this contribution.

18 The email that von Storch sent to the 20,000 recipients on the VIDA/Bang email list
19 stated that the cost of attendance was either \$100 for a "Friend," \$250 for a "Supporter," or
20 \$2,500 for "Host committee members." Those wishing to RSVP were directed to a contribution
21 page on OFA's website, <https://donate.barackobama.com/page/contribute/DCSJP>. The
22 invitation/solicitation sent by von Storch did not provide any other means of submitting an RSVP

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1 or making a contribution. The available information indicates that the contribution webpage
2 included the following disclaimer:

3 The first \$2,300 of each contribution from an individual will be allocated to Obama for
4 America and will be considered designated for the general election. The next \$28,500 of
5 each contribution from an individual will be allocated to the Democratic National
6 Committee. Any contributor may designate his or her contribution for a particular
7 participant. (Participants are Obama for America and the DNC). The allocation formula
8 above may change if any contributor makes a contribution that, when allocated, would
9 exceed the amount that the contributor may lawfully give to either participant.

10
11 The DNC and OVF deny knowingly accepting a contribution as a result of von Storch's
12 use of the VIDA and Bang email list. *See* DNC/OVF Response at 2. They note that they did not
13 request or receive the email list itself and von Storch, a volunteer fundraiser, used the
14 VIDA/Bang email list without prior approval or authorization. *Id.* The DNC and OVF further
15 assert that they did not request that von Storch send the email, that von Storch lacked the actual
16 authority, express or implied, to solicit contributions on behalf of the DNC or OVF, that he was
17 not an agent of the DNC or OVF. *Id.* Consequently, they assert they should not be held liable for
18 his actions. *Id.*

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B. Analysis

1. Use of the VIDA/Bang Email List

A corporation is prohibited from making a contribution in connection with a federal election under the Act. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). In addition, neither a federal candidate nor a political committee may knowingly accept a contribution from a corporation. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(d). The Commission's regulations further provide that a corporation may not facilitate the making of a contribution by using its corporate resources to engage in fundraising activities for any federal election. *See* 11 C.F.R. § 114.2(f)(1). The regulations provide examples of conduct that constitute corporate facilitation, including the use of a corporate customer list, to send invitations to individuals not within the restricted class to fundraisers without advance payment. *See* 11 C.F.R. § 114.2(f)(2).

Corporations such as VIDA Fitness and Bang Salon, which do not have separate segregated funds, are permitted to solicit contributions to be sent directly to candidates, but those solicitations are limited solely to its restricted class, consisting of its stockholders and executive or administrative personnel, and their families. 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(j) and 114.2(f). Moreover, corporate facilitation may result if the corporation uses its list of customers, who are not within the restricted class, to solicity contributions or distribute invitations to fundraisers without advance payment for the fair market value of the list. *See* 11 C.F.R. § 114.2(f)(2)(i)(C).

Thus, when VIDA fitness and Bang Salon (through David von Storch, their founder and CEO) emailed a list of 20,000 VIDA Fitness and Bang Salon customers and friends to distribute the OVF fundraiser invitation without advance payment, VIDA Fitness and Bang Salon solicited outside their restricted classes and facilitated the making of contributions to OVF. While Mr.

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1 von Storch reimbursed VIDA after the complaint was filed, such reimbursement may mitigate
2 but not vitiate a violation.

3 The DNC and OVF assert that neither the DNC nor OVF requested that von Storch use
4 the VIDA/Bang email list and his use of the list was done without the prior knowledge, approval,
5 or authorization of the DNC or OVF. There is no available information suggesting otherwise.
6 Consequently, the Commission finds no reason to believe that the Obama Victory Fund and
7 Andrew Tobias, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) in connection
8 with the VIDA Fitness/Bang Salon event.

9 2. Joint Fundraising Notices

10 The invitations and solicitations sent to the 20,000 email addresses on the VIDA/Bang
11 email list included solicitations for contributions to OVF, a joint fundraising committee.
12 Solicitations for joint fundraising activity must include certain information pursuant to 11 C.F.R.
13 § 102.17(c), including the names of all committees participating in the joint fundraising activity,
14 the allocation formula to be used to distribute joint fundraising proceeds, a statement informing
15 contributors that they may designate contributions for a particular participant in the joint
16 fundraising activity notwithstanding the allocation formula, and that the formula may change to
17 avoid the making and receipt of excessive contributions.

18 Although the email drafted by von Storch did not contain the required joint fundraising
19 notice, the only means of making the contribution solicited in the email was to use the link
20 included in the email. *See* Exhibit A to Von Storch Declaration. The web link in the
21 VIDA/Bang email invitation/solicitation directed contributors to a joint OVF-DNC webpage
22 created specifically for the fundraiser where they could make an online contribution that

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1 included the required joint fundraising notice.⁷ The response of the DNC/OVF also includes a
2 copy of the OVF invitation/solicitation for the fundraiser which, unlike the VIDA/Bang email,
3 includes a second page with a complete joint fundraising notice.

4 Under the circumstances, including that David von Storch was an OVF fundraising
5 volunteer who, according to OVF, drafted an email soliciting contributions without the
6 knowledge or authorization of OVF, and that a joint fundraising notice was included in both the
7 official OVF invitation/solicitation and the joint OVF-DNC webpage to which the VIDA/Bang
8 unauthorized solicitation directed contributors, the Commission finds no reason to believe that
9 the Obama Victory Fund violated 11 C.F.R. § 102.17(c) with regard to the email solicitations
10 sent by VIDA Fitness and Bang Salon.

11 **V. CONCLUSION**

12 The Commission dismisses the allegation that the Democratic National Committee and
13 the Obama Victory Fund, and Andrew Tobias, acting in his official capacity as their treasurer,
14 violated the Act based on the alleged receipt of contributions from Square Root Sales, Senate
15 Realty Corporation, and M&A Development, LLC, as a matter of prosecutorial discretion. *See*
16 *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Additionally, the Commission finds no reason to
17 believe that the Democratic National Committee and the Obama Victory Fund, and Andrew
18 Tobias acting in his official capacity as their treasurer, violated 11 C.F.R. § 102.17(c) by failing
19 to include joint fundraising notices in the Concert's solicitations. There is no reason to believe
20 that the Obama Victory Fund and Andrew Tobias, in his official capacity as treasurer, violated
21 2 U.S.C. § 441b(a) in connection with the VIDA fitness/Bang Salon event. Additionally, there is

⁷ At this time, that link re-directs contributors to <https://donate.barackobama.com/page/contribute/dnc08main>, which appears to be a page on the OFA website (now part of the DNC) and does not include a joint fundraising notice.

- 1 no reason to believe that the Obama Victory Fund violated 11 C.F.R. § 102.17(c) with regard to
- 2 the email solicitations sent by VIDA Fitness and Bang Salon.

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